

Administrative Order



Administrative Order No.: 3-30

Title: Living Wages Requirement for County Service Contracts

Ordered: 7/25/2000

Effective: 8/4/2000

AUTHORITY:

Section 4.02 of the Home Rule Amendment and Charter, Section 2-8.9 of the Code of Miami-Dade County and Ordinance 99-44.

POLICY:

It is the policy of Miami-Dade County that all service contractors performing covered services pay employees providing the covered services no less than the applicable hourly living wage rate, with or without health benefits, as specified in accordance with Section 2-8.9 of the Code of Miami-Dade County and Ordinance 99-44.

PURPOSE:

This Administrative Order implements Ordinance 99-44, Living Wage Ordinance for County Service Contracts, and establishes an administrative procedure for the filing, processing and resolution of complaints regarding underpayment of required hourly wages and if applicable health benefits and remedies for non-compliance with this ordinance. The Department of Procurement Management (DPM) is responsible for ensuring that the living wage requirements are included in all applicable contracts. The Department of Business Development is designated as the Compliance Officer and is responsible for implementing and enforcing this Administrative Order.

EXCEPTION:

This Administrative Order does not apply to contracts for covered services awarded by the County that involve a total contract value of one hundred thousand dollars (\$100,000) per year or less; however, the Ordinance does apply to all General Aeronautical Service Permits (GASP), and all contracts for services previously performed by County employees and solicited to be performed by a service contractor. Such services shall be covered regardless of the dollar value of the contract.

SECTION I - DEFINITIONS

The following definitions, as well as additional terms necessary for the understanding of this Administrative Order, shall apply:

- A. *Administrative hearing officer* means a qualified arbitrator appointed by the County Manager to resolve disputes arising from the enforcement of Miami-Dade County Ordinance 99-44.
- B. *Applicable department* means the County department using the service contract.
- C. *Complaint* means any written charge/allegation presented to the Compliance Officer alleging a practice prohibited by the Ordinance.
- D. *Compliance officer* means the County Manager or his/her designee to review compliance with Ordinance 99-44 and this Administrative Order.
- E. *Contract* means an agreement covered by Ordinance 99-44 involving the County or Public Health Trust, or approved by the County, the Procurement Director or his/her designee, or the Public Health Trust.
- F. *Contracting officer* means the Department of Procurement Management and Public Health Trust staff any other County personnel responsible for issuing County service contracts.
- G. *County* means the government of Miami-Dade County or the Public Health Trust.
- H. *Covered employee* means anyone employed by any service contractor, as further defined in Ordinance 99-44, either full or part time, as an employee with or without benefits that is involved in providing covered services pursuant to the service contractor's contract with the County.
- I. *Covered employer* means any and all service contractors and subcontractors of service contractors providing covered services.
- J. *Covered services* are services purchased by the County that are subject to the requirements of the Living Wage Ordinance which are one of the following:
 - 1. County Service Contracts - Contracts awarded by the County that involve a total contract value of over \$100,000 per year for the following services:
 - i. food preparation and/or distribution;
 - ii. security services;
 - iii. routine maintenance services such as custodial, cleaning, refuse removal, repair, refinishing and recycling;
 - iv. clerical or other non-supervisory office work, whether temporary or permanent;
 - v. transportation and parking services including airport and seaport services;
 - vi. printing and reproduction services; and,
 - vii. landscaping, lawn and/or agricultural services.
 - 2. GASP Permittee - Any covered service that is provided by a GASP permittee at Miami International Airport without reference to any contract value.
 - 3. Services Performed by County Employees - Should any services that are being performed by County employees at the time Ordinance 99-44 was

enacted be solicited in the future by the County to be performed by a service contractor, such services shall be covered subject to this Ordinance regardless of the value of the contract and language requiring same shall be inserted into any implementing legislation.

- K. *Debar* means to exclude a service contractor, its individual officers, its principal shareholders, its qualifying agent or its affiliated businesses from County contracting and subcontracting for a specific period of time, not to exceed five (5) years, pursuant to section 10-38 of the Code of Miami-Dade County.
- L. *Living wage* means the basic hourly rate of pay and health benefits contained in Ordinance 99-44.
- M. *Living Wage Commission* means a fifteen person commission established by the County Commission for the purpose of reviewing the effectiveness of the Living Wage Ordinance, reviewing certifications submitted by covered employers, reviewing quarterly reports on complaints filed by employees and making recommendations to the County Mayor and Commission.
- N. *Project manager* means the person assigned under a contract, usually a department director of the using agency or his/her designee, who has primary responsibility to manage the contract and enforce contract requirements.
- O. *Service contractor* is any individual, business entity, corporation (whether for profit or not-for-profit), partnership, limited liability company, joint venture, or similar business that is conducting business in Miami-Dade County or any immediately adjoining county and meets the following criteria:
 - 1. the service contractor is paid in whole or in part from the County's general fund, capital projects funds, special revenue funds, or any other funds either directly or indirectly, for contracted covered service whether by competitive bid process, informal bids, requests for proposals, some form of solicitation, negotiation, or agreement, or any other decision to enter into a contract; and
 - 2. the service contractor and any subcontractor is engaged in the business to provide covered services either directly or indirectly for the benefit of the County; or
 - 3. the service contractor is a GASP permittee at Miami International Airport.

SECTION II - RESPONSIBILITY OF THE COMPLIANCE OFFICER

The compliance officer shall, in cooperation with other agencies of the County which are affected by the provisions of Section 2-8.9 of the Code of Miami-Dade County and Ordinance 99-44, be jointly responsible for implementing this section of the Code. Primary responsibilities of the compliance officer include the following:

- A. Prepare, update and disseminate supplemental general conditions or other material for supplementing the bid specifications (including wages and benefits notice) for inclusion with applicable bid specifications and contract documents;

- B. Provide an overview of the monitoring process;
- C. Provide insight and guidance to the contracting officer, project manager and applicable departments on administration of living wage requirements for covered contracts; and
- D. Administer investigation of complaints and assessment of remedies (see section XII).

Performing additional duties and tasks as necessary to assure the proper management of this program, coordinate with the Office of the County Manager and with other County offices, departments and agencies including the Public Health Trust.

SECTION III - RESPONSIBILITY OF CONTRACTING OFFICER

The contracting officer for each agency of County government issuing service contracts subject to Section 2-8.9 of the Code, Ordinance 99-44 and this Administrative Order, and in cooperation with the compliance officer, shall:

- A. Insert the living wage and health benefits rate specifications in all advertised requests for bids, requests for proposals or quotations and contracts. The specifications for such contracts shall:
 - 1. Include the applicable hourly wage rate in dollars and cents for covered employees;
 - 2. Mandate the service contractor to whom the contract is awarded, and any subcontractor to that contractor, pay not less than the specified hourly living wage rate and health benefits to all employees providing covered services pursuant to performance of the contract;
 - 3. Provide that the covered employer may fulfill the obligation to pay such specified minimum hourly wage rate by payment of wages and contributions to employee health benefit plans, or payments of wages plus the minimum hourly cash equivalent of health benefits consistent with the requirements of Ordinance 99-44.
 - 4. Provide that the covered employer may qualify to pay the base living wage rate during a new employee's initial eligibility period, as specified in the employer's bona fide health benefit provider plan, provided the new employee will receive health benefits upon completion of the eligibility period and that covered employer submit proof of said health benefits to the contracting department for approval;

5. Provide that the covered employer shall pay the County five hundred dollars (\$500) as liquidated damages for each employee of the covered employer who performs any portion of the contract work for each week, or portion thereof, that such employee is paid less than the said specified combined overall hourly wage rate and if applicable, health benefits;
6. Provide that the covered employer shall post in a visible place on the site where such contract work is being performed a notice specifying the:
 - a. wages/benefits to be paid;
 - b. amount of liquidated damages for any failure to pay such specified combined overall hourly wage rate and, if applicable, health benefits, and
 - c. the name and address of the responsible official in Miami-Dade County to whom written complaints should be sent. Posting requirements will not be required where the covered employer prints the following statements on the front of the covered employee's first paycheck and every six months thereafter: "You are required by Miami-Dade County law to be paid at least [insert applicable rate under this Chapter] dollars an hour. If you are not paid this hourly rate, contact your supervisor or a lawyer." All notices will be printed in English, Spanish and Creole.
7. Provide that the County may withhold from the covered employer accrued payments as may be considered necessary to pay employees of the covered employer for the performance of the contract work, the difference between the hourly living wage rate plus, if applicable, health benefits required to be paid by the covered employer to the employees on the contract and the amounts received by such employee and, where violations have been found and upheld, the covered employer or their agents shall not be entitled to refunds of the amounts withheld in the event the covered employer has failed to properly reimburse employees.
8. Require the covered employer to keep, or cause to be kept, accurate written records signed under oath as true and correct showing:
 - a. the name, address, social security number, job title, and classification of each covered employee performing covered services on a contract;
 - b. the number of hours worked each day by each covered employee;
 - c. For each covered employee, the gross wages earned and deductions made; annual wages paid; a copy of the social security returns and evidence of payment thereof; a record of health benefit payments, including contributions to approved plans; and,

- d. any other data or information the Living Wage Commission or compliance officer should require.
9. Provide that no covered employer may terminate an employee performing covered services on a contract and/or retaliate because of the employee filing a complaint of a practice prohibited by this Administrative Order or because there is any enforcement action taken against a service contractor.

SECTION IV - RESPONSIBILITY OF PROJECT MANAGER

- A. The project manager shall have primary responsibility for ensuring compliance with Ordinance 99-44 by a covered employer and shall at a minimum ensure compliance of the following:
 1. Assure that covered employers have provided the required fair wage affidavit certifications with every invoice or requisition for payment and have posted the required wage and complaint information at the job site.
 2. Perform periodic examinations of covered employer's payroll and employment activity records.
 3. Perform the necessary worksite inspections and worker interviews to assure that employees are being paid the proper wages. In addition, the project manager will be responsible for performing other duties and tasks as necessary to assure the proper enforcement of Ordinance 99-44 and the required coordination with contractors, subcontractors and employees at County service contract sites.
 4. Forward complaints to compliance officer for investigation.
 5. Require that covered employer submit every six (6) months, to the applicable department, a complete payroll showing the employer's payroll records for each covered employee working on the contract for covered services for one payroll period and forward to compliance officer for review.
 6. Require that covered employer file with the applicable department every six months, reports of employment activities to be made publicly available, including: race, gender and wage rates employees hired and terminated. The report(s) must be forwarded to the compliance officer.

SECTION V - RESPONSIBILITY OF BIDDER OR PROPOSER

Respondents to requests for bids or requests for proposals on service contracts subject to the requirements of Section 2-8.9 of the Code, Ordinance 99-44 and this Administrative Order, shall provide the living wage affidavit with bids or proposals.

SECTION VI - RESPONSIBILITY OF SERVICE CONTRACTOR

The service contractor and any subcontractor(s) to the service contractor on a covered service contract is subject to the requirements of Section 2-8.9 of the Code, Ordinance 99-44 and this Administrative Order, and shall:

- A. Provide a certificate to the applicable department, with every invoice or requisition for payment, that includes the name, address, and phone number of the covered employer, a local contact person, and the specific project for which the service contract is sought; the amount of the contract; the applicable department the contract will serve; a brief description of the project or service provided; a statement of the wage levels for all employees; a statement of their commitment to pay all employees a living wage as set forth in the contract specifications; and the name and social security number of every employee that provided service for that requisition for payment.
- B. Pay covered employees no less than the hourly wage rate and if applicable health benefits under Ordinance 99-44 to all employees providing covered services on the project. Such payment obligations must be made by company or cashier's check and may be fulfilled by payment of wages and contributions to employee health benefit plans, or payments of wages plus hourly cash equivalent of health benefit as more specifically set forth in the Ordinance;
- C. Submit proof of health benefit plans to the applicable department in order to qualify to only pay the base living wage rate during a new employee's initial eligibility, as specified in the health benefit provider's bona fide plan, period provided the new employee will receive health benefits upon completion of the eligibility period;
- D. Post a notice in a visible place on the site where such contract work is being performed specifying the:
 - 1. wages/benefits to be paid;
 - 2. the amount of liquidated damages for any failure to pay such specified combined overall hourly wage rate and, if applicable, health benefits; and
 - 3. the name and address of the responsible official in Miami-Dade County to whom written complaints should be sent. Posting requirements will not be required where the employer prints the following statements on the front of the covered employee's paycheck and every six months thereafter: "You are required by Miami-Dade County law to be paid at least [insert applicable rate under this Chapter] dollars an hour. If you are not paid this hourly rate, contact your supervisor or a lawyer." All notices will be printed in English, Spanish and Creole.

- E. Keep or cause to be kept, accurate written records signed under oath as true and correct showing the name, social security number, job title and classification of each covered employee performing covered services on the contract; the hourly wages paid, any cost contributions to health benefit plans and any cash payments paid to each employee;
- F. Submit to the County a list of all subcontractors, and the names and social security numbers of all employees thereof, who performed covered services on the contract;
- G. Refrain from terminating or otherwise retaliating against an employee performing work on the contract even though a complaint of practices prohibited by this Administrative Order has been filed by the employee or other investigation or enforcement action is being taken regarding such service contractor;
- H. Allow compliance officer ready access to documents and employees for interviews without interference;
- I. Maintain payrolls for all covered employees and basic records relating thereto and preserve them for a period of three (3) years from contract expiration. The records shall contain: the name, address, and social security number of each covered employee, the job title and classification, the number of hours worked each day, the gross wages earned and deductions made; annual wages paid; a copy of the social security returns and evidence of payment thereof; if applicable, a record of health benefit payments including contributions to approved plans; and any other data or information the Living Wage Commission or compliance officer may require;
- J. Submit a complete payroll showing the service contractor and its' subcontractors' payroll records for each covered employee working on the contract for covered services for one payroll period every six (6) months to the applicable department;
- K. File with the applicable department, every six (6) months, reports of employment activities to be made publicly available, including race and gender of employees hired or terminated; zip codes of employees hired or terminated; and wage rates of employees hired or terminated;
- L. Make all requested records required hereunder to be kept available for inspection, copying or transcription by authorized representative of the County, and permit such representative to interview employees during working hours on the job. Failure to submit the required reports upon request or to make records available may be grounds for debarment. Ensure submission of the information required hereunder and for the maintenance of records and provision of access to same by all subcontractors; and,

- M. Include in any subcontracts the clauses set forth in the Supplemental General Conditions, as prepared by the compliance monitor, for Ordinance 99-44 included in the bid specifications and a clause requiring the subcontractors to include these clauses in any subcontracts. Ensure compliance of any subcontractor under them with the provisions of Ordinance 99-44.

SECTION VII - PROCEDURES FOR DETERMINING LIVING WAGE RATES

The compliance officer will annually index the living wage rate for inflation as defined by the Consumer Price Index calculated by the U.S. Department of Commerce as applied to the Miami-Dade County. The first indexing adjustment shall occur for the 2001-2002 County budget year using the Consumer Price Index figures provided for the calendar year ended December 1, 2000, and thereafter on an annual basis. The base rate for the first adjustment will be \$8.56 per hour plus \$1.25 for health benefit equivalent or \$9.81 per hour without health benefit. Copies of the revised living wage rates shall be distributed to County departments and the Public Health Trust.

SECTION VIII- PROCEDURES FOR NOTIFICATION AND DOCUMENTS

The contracting officer responsible for the service contracts shall:

- A. Send copy of advertisement for bids to the compliance officer when the project is to be advertised;
- B. Notify the compliance officer of scheduled pre-bid or pre-work conferences;
- C. Notify the compliance officer when the contracts have been awarded; and,
- D. Provide the compliance officer with notices to proceed.

SECTION IX - PROCEDURES FOR FILING, PROCESSING AND RESOLUTION OF COMPLAINTS OF PRACTICES PROHIBITED BY THIS ADMINISTRATIVE ORDER

The compliance officer will administer the complaint process. This procedure shall include the following steps:

- A. Complaints including name, title and address must be submitted in writing to the compliance officer;
- B. Compliance officer shall review complaints, supporting material and conduct investigation(s);
- C. Compliance officer shall coordinate the examination of appropriate records and analyze the information obtained from the investigation with the project manager responsible for managing service contract;

- D. Compliance officer shall coordinate, mediate and encourage resolution of the complaint between the project manager, the covered employer and the complainant;
- E. Compliance officer shall maintain a file of complaints and any resolution thereof; and,
- F. Compliance officer may require covered employers found to be in violation of the requirements of Ordinance 99-44 to pay:
 - 1. liquidated damages of \$500 for each employee of the covered employer who performs any portion of the contract work for each week, or portion thereof, that is paid less than the specified living wage rate and, if applicable, health benefits, and
 - 2. back wages to each covered employee that was not paid the required living wage rate within thirty (30) days of the findings of violation and/or order an amount equal to the amount of such underpayment be withheld from the covered employer and remitted to the employee(s).
- G. Covered employers shall be allowed ten (10) days to file a written request for appeal to the compliance officer.
- H. In addition to the payment of penalties and back wages, the compliance officer may recommend that:
 - 1. The County Manager debar a service contractor found to have violated the requirements of this Administrative Order a second time.
 - 2. The County Manager terminate the service contract of a service contractor found to be in violation of the requirements of this Administrative Order a third time.

SECTION X - PROCEDURES FOR APPEAL THROUGH ADMINISTRATIVE HEARING OFFICER PROCESS

The procedure for appeals shall include the following steps:

- A. Appeals of findings of violation and penalties imposed by the compliance officer shall be heard by an administrative hearing officer. Upon the receipt of a written appeal, the compliance officer shall notify the County Manager in writing and the County Manager shall appoint an administrative hearing officer and set a time for an administrative hearing. Failure to appeal within the specified time shall be considered a waiver of the appeal process provided for in Section X.
- B. Notification of hearing date shall be served by the compliance officer upon the

covered employer against whom the complaint is made within ten (10) working days of the appointment of the administrative hearing officer. Such notice shall be by certified mail, return receipt requested. Such notice shall include:

1. A copy of the written complaint, including reasons and causes for the proposed administrative hearing, outlining alleged prohibited practices upon which it is based;
 2. The penalties sought to be assessed;
 3. That an administrative hearing shall be conducted before an administrative hearing officer on a date and time not to exceed thirty (30) business days after service of the notice. The notice shall also advise the covered employer that they may be represented by an attorney, may present documentary evidence and verbal testimony, and may cross-examine or rebut evidence and testimony presented against them; and,
 4. A description of the effect of the issuance of the notice of the proposed administrative hearing and the potential effect(s) of this administrative hearing.
- C. The compliance officer or his/her designee shall, with the assistance of the project manager, present evidence and arguments to the administrative hearing officer.
- D. No later than seven (7) days prior to the scheduled hearing date, the service contractor must furnish the compliance officer a list of the defenses the service contractor intends to present at the administrative hearing. If the service contractor fails to submit the list, in writing, at least seven (7) days prior to the administrative hearing, or fails to seek an extension of time within which to do so, the service contractor shall be deemed to have waived the opportunity to be heard at the administrative hearing. The administrative hearing officer shall have the right to grant or deny an extension of time, and the decision may only be reviewed upon an abuse of discretion.
- E. Hearsay evidence shall be admissible at the administrative hearing, but shall not form the sole basis for finding a violation of Ordinance 99-44. The administrative hearing shall be transcribed, taped or otherwise recorded by a court reporter, at the election of the administrative hearing Officer and at the expense of the County. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party. The costs of such transcription may be assessed by the hearing officer against a service contractor that has been found to violate Ordinance 99-44.

SECTION XI - QUALIFICATIONS OF HEARING OFFICERS

Administrative hearing officers shall be residents of Miami-Dade County who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the County Manager or his/her designee. Qualifications for administrative hearing officers should include retired judges who are licensed and admitted to practice law in the State of Florida, or arbitrators or mediators certified by the Eleventh Judicial Circuit or State Bar Association. Additional qualifications include, but are not limited to, experience in labor and employment issues, contracting, procurement, bonding or financial services activities. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk. The Clerk shall submit an annual report to the Board on the number of women who have served as administrative hearing officers.

The County Manager or his/her designee shall appoint as many administrative hearing officers as are deemed necessary. Every effort will be made to ensure that the appointment of administrative hearing officers reflect the diversity of the demographics of Miami-Dade County. Appointments shall be made for a term of one (1) year. Any administrative hearing officer may be reappointed at the discretion of the County Manager, subject to ratification by the Clerk of the Board of County Commissioners. There shall be no limit on the number of reappointments that may be given to any individual administrative hearing officer; provided, however, that a determination as to reappointment must be made for each administrative hearing officer at the end of his or her one-year term. The County Manager shall have the authority to remove administrative hearing Officers at any time. Appointments to fill a vacancy shall be for the remainder of the unexpired term. Administrative hearing officers shall not be County employees but shall be compensated at a rate to be determined by administrative order.

SECTION XII - ADMINISTRATIVE REMEDIES

The County Manager or his/her designee will administer the penalty and sanction process for covered employers that have received their second and third violations. This procedure shall include the following steps:

- A. Upon completion of the administrative hearing, the administrative hearing Officer shall submit written findings and recommendations together with a transcript and exhibits of the administrative hearing, to the County Manager or his/her designee within thirty (30) days of the receipt of the transcript.
- B. If the County Manager or his/her designee determines a covered employer failed to comply with the provisions of this Administrative Order a second time, the non-complying covered employer and the principal owners and/or qualifying agent thereof may be prohibited from bidding on or otherwise participating in County contracts for a period not to exceed five (5) years.

- C. If the County Manager or his/her designee determines a covered employer failed to comply with the provisions of this Administrative Order a third time, the non-complying covered employer's service contract with the County may be terminated.

SECTION XIII - LIVING WAGE COMMISSION

The Living Wage Commission is responsible for reviewing the effectiveness of the living wage Ordinance and recommending changes, reviewing certifications submitted by covered employers to the County and making recommendations to the County Mayor and County Commission regarding the Ordinance. DPM will provide staff to support the activities of the Living Wage Commission which shall meet not less than quarterly and in special sessions as required.

This Administrative Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

M. R. Stierheim
County Manager